Supreme Court of the United States.

OCTOBER TERM, 1975.

No. 75-7171

HIRAM RICKER & SONS CORP.,
PLAINTIFF-APPELLEE,

v.

STUDENTS INTERNATIONAL
MEDITATION SOCIETY,
DEFENDANT-APPELLANT.

ON APPEAL FROM THE SUPREME JUDICIAL COURT
OF THE STATE OF MAINE.

Jurisdictional Statement.

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Jurisdictional Statement.

Opinions Below.

This is an appeal arising in the proceedings of the Supreme Judicial Court of the State of Maine on certification of questions of state law ordered by the United States Court of Appeals for the First Circuit. The opinion of

the Supreme Judicial Court of the State of Maine is reported at 342 A. 2d 262 (1975), Appendix F. The opinion of the First Circuit Court of Appeals is reported at 501 F. 2d 550 (1st Cir. 1974), Appendix A.

Jurisdiction.

This proceeding is a contract action brought by the plaintiff in the Federal District Court for the District of Massachusetts pursuant to 28 U. S. C. § 1332.

Jurisdiction of this Court is invoked pursuant to 28 U. S. C. § 1257(2), this being an appeal which draws into question the validity of the Maine certification law on the ground that as applied in this case, it is repugnant to the Constitution of the United States. The Maine certification law is set forth in Maine Revised Statutes Title 4 § 57, 1973, supplement, and Maine Rules of Civil Procedure, Rule 76B. Appendix J, K.

The appellant, Students International Meditation Society is hereinafter referred to as the *Society*. The appellee, Hiram Ricker and Sons, is hereinafter referred to as *Ricker*. The judgment on certification of the Maine Supreme Judicial Court was entered July 24, 1975. Notice of appeal was filed in the Maine Supreme Judicial Court on August 5, 1975. Jurisdiction of this matter is supported by *England* v. *Louisiana State Board of Medical Examiners*, 375 U.S. 411; 84 S. Ct. 461; 11 L. Ed. 2d 440 (1964), where this Court held that after abstention on state questions by the federal court, if federal claims are raised in the state court and denied, the party's right to review by a federal court is preserved only by an appeal to this Court, rather than by a return to the federal court to raise the federal claims anew.

In the event that this Court does not consider appeal the proper mode of review, appellant requests that the papers whereupon this appeal is taken be regarded and acted upon as a petition for writ of certiorari pursuant to 28 U. S. C. § 2103.

This matter involves the Fifth and Fourteenth Amendments to the Constitution of the United States. This appeal also involves Maine Revised Statutes Title 4 § 57 and Maine Rule of Civil Procedure 76B, which provide for the certification of questions of law on which the federal court elects to abstain from decision. Appendix J, K.

Copies of the notice of appeal, certification document, and orders of the Maine Supreme Judicial Court are set forth in the appendix hereto, in conformity with the requirements of Supreme Court Rule 15(v).

Question Presented.

Whether the Maine certification law as applied in this case is repugnant to the fundamental requirements of due process of law guaranteed by the United States Constitution, in that the Maine certification law authorized the censorship of portions of the Society's brief constituting the Society's lead argument in the certification proceeding; refusal of the Maine court to permit reference to relevant portions of the federal court record; and refusal of the Maine court to permit the Society to present its lead argument in its brief or in oral argument.

Statement of the Case.

Ricker received a jury verdict in its favor in the amount of $67,750 on its claim alleging an outstanding balance due in excess of the $185,000 paid by the Society for hotel

services rendered to the Society and 1,000 of its members under a written contract during a one month teaching course which took place in the summer of 1971. On appeal the First Circuit Court reversed on the ground that the Society was substantially prejudiced by the admission into evidence of extensive business records substantiating Ricker's claim, which records were shown to have been fabricated by Ricker's president from memory after the fact. The jury charge was also confusing and a number of the Society's other assignments of error were not reached. The Court of Appeals for the First Circuit questioned whether Ricker could maintain an action in the face of the Society's proven defense that Ricker's performance was illegal since the Ricker management was not authorized by the town to operate hotel facilities as required by the Maine victualer's license law, and moreover, most of its buildings lacked the requisite licenses based on inspection of the Maine State Department of Health. Before the Court of Appeals for the First Circuit, the Society argued from the record that Ricker's violation of the Maine health laws was not merely inadvertent and technical but, moreover, the violation was shown by uncontested facts adduced from an inspector of the Maine Department of Health which showed that Ricker had violated virtually every health and safety requirement enforced by the license laws. The Court of Appeals for the First Circuit remanded this action to the Federal District Court with instructions to the effect that the question of Ricker's right to maintain an action on "the facts of the instant case" first be certified from the Federal District Court to the Maine Supreme Judicial Court. After remand, the trial judge requested draft certification proposals from the parties and thereafter a cer-

tification abstract was forwarded directly to the Maine court. The abstract utterly failed to reveal the extent to which Ricker had violated the health and safety requirements controlled by the license laws. The Society in its brief to the Maine court referenced its arguments to the actual record as it was developed for the appeal to the Court of Appeals for the First Circuit and presented there. Facts were marshalled in the Society's brief to support the Society's lead argument—that the illegality was so substantial as to raise a question of moral turpitude. The Society sought to file a record appendix in essential conformity with the appellate rules of the Maine Supreme Judicial Court. On Ricker's motion before a single justice of the Maine Supreme Judicial Court, however, the record appendix was stricken and extensive portions of the Society's brief, revealing the substantial illegality of Ricker's performance, were censored from the consideration of the other justices. Appendix C. The Society then brought a motion in the Federal District Court to amend the certification document by appending the relevant portions of the record. The motion was denied on Ricker's argument that the Maine Supreme Judicial Court had already denied the same motion in another form. Thereafter, the Society brought a motion in the Maine Supreme Judicial Court to dismiss the certification on the ground that the censoring of the Society's lead argument from the brief and exclusion of the federal record authorized by the Maine certification statutes violated the fundamental requisites of due process of law. The motion was denied without hearing or explanation on February 27, 1975. The certified questions were thereafter presented to the full bench of the Maine Supreme Judicial Court in the context of a

case wherein the hotel's illegality was essentially technical despite some unspecified incidental health hazard. Essential facts of the controversy had thus vanished en route from the Court of Appeals for the First Circuit. Other facts concerning the uniqueness of the circumstances, however, were fully developed from the original trial record and set forth in the fact abstract of the certification document. The Maine Supreme Judicial Court held, in its opinion on the certification, that the lack of licenses does not bar an action by one performing without the authority of a required license unless the license statute specifically requires that result. In view of the factual background, however, it is not certain whether the Maine Supreme Judicial Court intends entirely to abolish the defense of illegal performance where the violation is shown to be substantial, or where the nature of the illegality rises to the level of moral turpitude.

Manner in Which Federal Claim was Raised.

The federal claim was raised in the Maine Supreme Judicial Court by written motion to dismiss setting forth the ground that the Society was denied due process of law by the censoring of portions of its brief and refusal of the Maine Supreme Judicial Court to permit the Society to argue from the record. For the purpose of the jurisdiction of this Court, it is not significant that the Maine Supreme Judicial Court did not address itself to the issue raised. *Street* v. *New York,* 394 U.S. 576; 89 S. Ct. 1354; 22 L. Ed. 2d 572 (1969). *Chambers* v. *Mississippi,* 410 U.S. 284; 93 S. Ct. 1038; 35 L. Ed. 2d 297 (1973).

Finality of Decision.

It is established that in abstention cases, the opinion of the state court, of last resort is a decision treated as a "final decision" for the purpose of 28 U. S. C. § 1257, thus permitting or even requiring a party to bring his federal claim directly to the United States Supreme Court. *NAACP* v. *Button,* 371 U.S. 415; 83 S. Ct. 328; 9 L. Ed. 2d 405 (1963). See also *Lassiter* v. *Northampton County Board of Elections,* 360 U.S. 45; 79 S. Ct. 985; 3 L. Ed. 2d 1072 (1959). The instant case varies from *Button* only in that in *Button* the federal claim arose as part of the original action prior to the abstention. Here the federal claim arose after abstention and grew out of the abstention itself. It should make no difference, however, as to the point in the litigation in which the federal claim arises. Once a valid federal claim exists in an abstention case, there is no reason to proceed differently because of the point at which the claim arose. The policy enunciated by this Court is that a party who has been sent from the federal court to the state court by abstention and submits his federal claim in the state court should not thereafter be permitted to return to the Federal District Court and raise anew the federal claims denied by the state court. The party asserting a federal claim in the course of an abstention proceeding has his remedy in appeal to the United States Supreme Court. *England* v. *Louisiana State Board of Medical Examiners, supra.*

The Appeal Doctrine of the England Case.

In *England* the Federal District Court abstained on the question of whether the Louisiana medical licensing requirements applied to chiropractors since this issue of state

law would preclude reaching the federal constitutional issues. The parties assumed that *Government Employees* v. *Windsor,* 353 U.S. 364; 77 S. Ct. 838; 1 L. Ed. 2d 894 (1957) required the parties to assert and litigate the federal claims as well, in the state court. According to *England* however, *Windsor* indicated only that the state court must be informed as to what the federal claims are so that the state statute could be construed in light of those claims. See also 73 Harvard L. Rev. 1358, 1364, 1365 (1960). *England* clarifies *Windsor* by explicitly holding that if a party submits his federal claim in the state court he has elected to forego a right to return to the federal court with the federal claim.

> "[i]f a party freely and without reservation submits his federal claims for decision by the state courts, litigates them there and has them decided there, then—whether or not he seeks review of the state decision in this Court—he has elected to forego his right to return to the District Court."

England, supra, at 419. Thus, the Society having fully submitted in its motion to dismiss, its federal claim that the Maine certification law authorizes violation of fundamental due process is now in proper posture for appeal to this Court. Under the doctrine of *England* it appears that the Society has no other federal court access on its federal claim.

Validity of the Statute Drawn into Question.

It is well established that this Court does not consider irregularities and mere errors in proceedings under the state statute. The question which can be brought before

this Court is not whether the court below, having jurisdiction of the case and the parties, has followed the law, but whether the law, if followed, would have furnished a protection guaranteed by the Constitution of the United States, since the authority of this Court does not extend beyond an examination of the power of the courts below to proceed at all. Thus, it is elementary that this Court lacks jurisdiction to review mere errors of law alleged to have been committed by a state court in the performance of its duties within the scope of its authority concerning matters nonfederal in character. *McDonald* v. *Oregon Railroad and Navigation Company,* 233 U.S. 665; 34 S. Ct. 772; 58 L. Ed. 1145 (1914).

The instant appeal, however, attacks the authority of the Maine certification law. Under Maine certification procedure it is clear that the Maine Supreme Judicial Court controls the access of the parties to the record. It is not argued here that the decision of the single justice of the Maine court censoring the Society's lead argument was a mistake or error relative to the statute or rule. Indeed, the rule clearly allows the court discretion over the extent of the factual matter it will consider. Under sub-section (c) of the Maine Rules of Civil Procedure, Rule 76B as authorized by the Maine certification statute, record facts can only be brought before that court under the following provision:

> "(c) The Supreme Judicial Court may, in its discretion, require the original or copies of all or any portion of the record before the Federal Court to be filed with said certificate where, in its opinion, such record may be necessary in answering any certified question of law."

Thus, the court, without seeing or considering the record, makes a blind determination of the relevance of the facts developed in the record. This function, however, has since ancient times belonged to the parties who in the adversary tradition are permitted to argue the relevance and significance of the facts of record. The court then determines the validity of the arguments after hearing both sides. It is difficult to imagine anything more basic to the requirements of due process in jurisprudence. *Fuentes* v. *Shevin*, 407 U.S. 67; 92 S. Ct. 1983; 32 L. Ed. 2d 556 (1972). *Twining* v. *New Jersey*, 211 U.S. 78; 29 S. Ct. 14; 53 L. Ed. 97 (1908). Thus, the instant appeal is not one which would challenge the decision of the Maine court as an error under the Maine certification law. On the contrary, the Maine certification law clearly authorizes the decision refusing to permit the Society to argue from the record, since the discretion is expressly stated in subsection (c) of Maine Rule 76B.

These Questions are Substantial.

The problems inherent in using a fact abstract in a certification proceeding in which the significance of various facts is disputed has been the subject of concern to the commentators and text writers since the certification device was first developed. As observed in the Texas Law Review, "The abstract form of the certified question itself may well distort the state court's answer" 49 Tex. L. Rev. 247, 264 (1971). See also C. Wright *Law of Federal Courts* § 52 at 204, Currie, 36 U. Chi. L. Rev. 268, 314 (1969). The Maine certification statute itself was specifically criticized by C. Wright because it brings before the

Maine Supreme Judicial Court cases which are "divorced from the complete factual setting in which they may be more carefully understood." Wright, 22 Maine L. Rev. 511, 513 (1970).

The practical difficulties of handling the Maine certification procedure further illuminate the inherent shortcomings. In the instant case, the trial took place in July of 1973. The case was decided by the Court of Appeals for the First Circuit in July of 1974. In September of 1974, the duty fell to the trial judge to develop a fact abstract for a case which he had not considered for over a year's time. The parties submitted proposed certification documents but on what basis should the trial judge choose one over the other. The potential for error is obvious. Traditionally, the time honored adversary process itself has been the guarantee of accuracy and this vital step should not be short cut, in the interest of expediting federal abstention.

The certification device, if it is properly applied to facilitate abstention in cases of this type, must be developed to protect the parties' essential adversary rights relative to the facts in controversy. In abstention proceedings by declaratory judgment, the parties actually try the case in the state court before arriving in the state court of last resort for decision on the question from which the federal court abstained. It should be possible, however, to devise a method for certification which does not involve a re-enactment of the trial while preserving the adversary's access to the record evidence which is an essential function of advocacy.

The Certified Questions Have Not Been Answered in Light of the Actual Circumstances.

The decision in the instant case appears on the surface to declare that the common law contract defense of illegality is abolished in the law of Maine. A superficial view of the decision leads to a conclusion that since the decision of the Maine court abolishes the common law defense of illegality, the issue of due process is now moot and there are no facts which would revive this common law defense. Such an interpretation could have startling consequences. For example, an unlicensed vendor of narcotics could use the Maine court to collect an alleged outstanding balance due for the sale of contraband. The Maine criminal laws provide their own penalties and unenforceability of contracts performed in violation of these laws is not required by statute in Maine. It is doubtful, however, that the *Ricker* decision is intended to work such a drastic departure from basic principles of the common law of contracts. The reasonable application of *Ricker* is that in so far as nonconformity with technical requirements of regulatory schemes is concerned, illegality will not provide a defense in a contract action unless the statute so mandates. If so, however, the actual facts of *Ricker* are significantly distinguished from those presented in the certification. The Society asserts that if it is permitted to argue from the record, uncontested facts will show a violation of the health and safety concerns controlled by the license laws which rise far beyond a technical violation or mere failure to hold a valid license.

Conclusion.

The question of the adequacy of provisions for due process in the presentation of arguments has been an essential function of the United States Supreme Court even when the statute in question is not related to the functioning of federal justice itself. *Schroeder* v. *City of New York,* 371 U.S. 208; 83 S. Ct. 279; 9 L. Ed. 2d 255 (1962).

Respectfully submitted,

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United States Court of Appeals
For the First Circuit

No. 73-1273

HIRAM RICKER & SONS,

PLAINTIFF, APPELLEE,

v.

STUDENTS INTERNATIONAL MEDITATION SOCIETY,

DEFENDANT, APPELLANT.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Before COFFIN, *Chief Judge*,
McENTEE and CAMPBELL, *Circuit Judges*.

George R. Halsey, with whom *Robert I. Deutsch* and *Ruboy, Deutsch & Krasnow* were on brief, for appellant.

Enid M. Starr, with whom *Bernard A. Dwork* and *Barron & Stadfield* were on brief, for appellee.

July 17, 1974

McENTEE, *Circuit Judge*. This is a diversity action based on a contract. Plaintiff-appellee Ricker owns a 2500-acre resort complex in Poland Springs, Maine, which includes lodgings, a golf course and a beach. At the beginning of 1970, only the golf course and a single adjacent building, the Poland Springs Lodge, were actually in use and open to the public. In February 1970, representatives of the defendant-appellant Society contacted Ricker about taking over some of the unused facilities from June 28 to July 26 for a course

to train new instructors of transcendental meditation.[1] After some negotiation, Ricker agreed to furnish rooms, facilities and three vegetarian meals and a snack per day for the course participants.[2] In exchange, the Society was to pay Ricker based on a specified schedule of room rates and the number of persons who would attend. The Society would be responsible for the head-count necessary to determine its final bill. The training course was held at the Poland Springs complex on the dates scheduled. The Society paid Ricker a total of $185,000 in a series of payments, some in advance and some during the course.

Ricker brought this action seeking $77,508.36 as the balance allegedly due on the contract.[3] Alternatively, Ricker sought the same amount on the theory of quantum meruit. In response, the Society counterclaimed for return of the $185,000 in payments already made. At trial, Ricker presented evidence tending to show that more persons attended the training course than were accounted for in the Society's payments. Ricker also presented evidence that the Society improperly reduced some of the agreed-upon room rates as it made its calculations. The Society presented evidence to rebut these assertions. With respect to its counterclaim, it also presented evidence tending to show that the rooms and dining facilities which Ricker provided were dirty and inadequate. Finally, the Society raised the issue whether under Maine law Ricker could recover at all under the contract or in quantum meruit, in view of its apparent failure

[1] The Society is a nonprofit California corporation, the purpose of which is to spread the teachings of Maharishi Mahesh Yogi, an exponent of transcendental meditation. The Maharishi was also named as a defendant in Ricker's complaint, but the district court directed a verdict in his favor at the close of Ricker's evidence. Ricker does not appeal that decision.

[2] There was no formal contract. Instead, the basic agreement was embodied in certain correspondence admitted into evidence. Some modifications were made subsequently, and several others were disputed at trial.

[3] This figure is taken from Ricker's amended complaint. Initially, Ricker sought $76,899.36.

to obtain certain licenses required by statute.[4]

The district court submitted all issues to the jury. With respect to licenses, it instructed:

> ". . . if you should find from the evidence in this case that the plaintiff was not licensed under the statutes that I have just read to you . . . you *would be warranted* in finding for the defendant on the claim brought by the plaintiff against the defendnat." (Emphasis added.)[5]

The jury returned a verdict for Ricker in the amount of $65,780.00 and rejected the Society's counterclaim. The court entered judgment on the verdict, adding $9,494.16 in interest.

The Society raises a variety of issues on appeal. We will consider them in an order somewhat different from that set forth in the briefs.

Offer of Settlement—The Society contends that the district court improperly admitted evidence of an offer to settle Ricker's claim. However, we hold that the evidence to which the Society objects was not an offer to settle within the meaning of the rule calling for exclusion.

The precise testimony was this. Saul Feldman, the president of Ricker, became increasingly dissatisfied with the size of the periodic payments the Society made to him during the one-month training course. Feldman felt that more persons had attended the course than the Society would concede. On July 26, the last day of the course, he called on Jerry Jarvis, a Society executive. At this time, pursuant to their

[4] Although this case was brought in the District Court for the District of Massachusetts, the parties agree that the law of Maine governs the substantive issues in the case. The contract was largely negotiated in Maine and wholly executed there.

[5] The court further said:

> "I instruct you that it will be your duty, and your duty alone, from the evidence before you to determine whether or not the plaintiff was licensed and, if so, is he then entitled to be paid for any balance of the contract? If you find he was not licensed and therefore he is not entitled to be recompensed you will find for the defendant *or you would be warranted in finding for the defendant.*" (Emphasis added.)

contract, Feldman anticipated receipt of the final payment. He testified:

> "[Jarvis] passed me a yellow sheet of paper saying, 'This is what we owe you. If you agree and sign a release absolving us from any and all damage and all future bills we will pay you.' It was $44,000."

Counsel for the Society moved to strike this testimony on the ground that it was an inadmissible offer of settlement. The court refused. Whereupon the yellow sheet itself was received in evidence and read to the jury by Ricker's counsel, again over objection. Nothing on the sheet referred to an offer of settlement. It was entirely a series of calculations, which concluded that the Society owed Ricker a final bill of $44,163.25.

It is, of course, true that evidence of settlement negotiations is generally inadmissible. On the other hand, there is a "well-recognized exception regarding admissions of fact as distinguished from hypothetical or provisional concessions conditioned upon the settlement's completion." *NLRB* v. *Gotham Indus., Inc.*, 406 F.2d 1306, 1313 (1st Cir. 1969). *See generally* 4 Wigmore, Evidence § 1061 (Chadbourn rev. 1972). In the instant case, the yellow sheet handed to Feldman on the final day of the course represented the Society's "unconditional assertion" of what it thought it actually owed Ricker based on the contract. *See* 4 Wigmore, *supra*, at 34. It was not a hypothetical or conditional sum intended only to forestall the additional costs of litigation. Indeed, although Ricker was unhappy about the size of the early payments, until it received the Society's final payment offer of $44,000, it could not determine whether it had an actual controversy with the Society. The rule excluding offers of settlement is designed to encourage settlement negotiations after a controversy has actually arisen. It also prevents admission of evidence that does not represent either party's

true belief as to the facts. Neither policy would have been served by excluding Feldman's testimony about the Society's final payment offer, or the yellow sheet on which that offer was calculated.

Hearsay Objections — As indicated earlier, Ricker did not handle the registration of course participants. Instead, it was to rely upon the Society's head-count in determining the final bill under the contract. During the course, however, Feldman became suspicious of the Society's tally because he seemed to be serving far more meals than warranted. Therefore, on three occasions he asked several of his maintenance employees to go around from building to building, counting the number of persons occupying each room. According to Feldman, they reported their findings to him in note form, indicating more guests than the Society asserted.[6] Feldman said the notes were destroyed and that later, from memory, he complied tables of upward "adjustments" to the figures the Society had submitted to him. These adjustments were admitted into evidence over objection.

As both parties agree, the tables of adjustments compiled by Feldman were hearsay.[7] They were based on reports to him by maintenance employees who themselves were not present in court to testify. Ricker asserts that the evidence was nonetheless admissible under the business-records exception to the hearsay rule. 28 U.S.C. § 1732 (1970). We disagree. A crucial aspect of the business-records exception

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[6] "The housekeepers or housemen who are in charge of each building, when they made their inspections, would let me know if every bed in that house was used or if there was some beds that were not being used. I believe they arrived at that by observing the beds and the bedding and by looking in the closet or in the bathroom to see if there were two toothbrushes or two different size shoes or different kind of clothes, and they would — when they made their three checks, they would say, 'All beds are being used except' and they would note the exception, that two beds, one not used, or three beds, one not used."

[7] Strictly speaking, it was double hearsay. Feldman's entries themselves were a form of hearsay. The information from employees on which he based those entries was separate hearsay.

is that entries be prepared as a *regular* part of the business. "The entry offered must of course be a part of a *series of entries* or *reports*, not a casual or isolated one." 5 Wigmore, Evidence § 1525 (3d ed. 1940) (emphasis in original). *See Palmer* v. *Hoffman*, 318 U.S. 109 (1943). Otherwise, there is no basis for the presumption of reliability which is at the heart of the exception. The room-check here by Ricker's maintenance employees was hardly the kind of regular, systematic business activity which is encompassed by the exception. The method they employed, *see* note 6 *supra*, hardly warranted a presumption of reliability. Moreover, another requirement of the exception is that entries be made contemporaneously with the transaction. 5 Wigmore, *supra*, § 1526. Here, Feldman made the entries, *from memory*, at least a week after the maintenance employees last reported to him. For this reason also, there is no basis for a presumption of reliability. Therefore, the exhibits were improperly admitted. Instead Ricker should have called the maintenance employees as witnesses.

Ricker alternatively contends that even if there was error it was harmless. Again, we disagree. The documentary listing of purported "short" counts by the Society was likely to have a profound effect on the jury's factfinding. This was the strongest evidence supporting Ricker's contention that the Society cheated in counting the number of course participants. A new trial is therefore warranted.

Licenses — Although the preceding holding requires at least a new trial, we also must consider the licensing issue raised by the Society because this could preclude a judgment for Ricker in any event. As we indicated earlier, the court submitted to the jury the question of whether Ricker possessed certain licenses required by Maine statutes at the time the training course was held. Specifically these were the "victualer's" license, Me. Rev. Stats. Ann. tit. 30, § 2751

(1973 Supp.),[8] and the sanitation license, Me. Rev. Stats. Ann. tit. 22, § 2482 (1965).[9] Moreover, by using the phrase "you would be warranted" the court's instruction allowed the jury to find for Ricker even if it was not properly licensed at the time of the course.

The Society contends that this was an error in two respects. First, it asserts that the evidence conclusively established that Ricker did not have either type of license during the course, with one exception.[10] Therefore, it claims that the question was improperly submitted to the jury. Second, the Society contends that under Maine law the absence of the licenses absolutely precluded recovery by Ricker either on the contract or in quantum meruit. Therefore, it claims additional error in the jury instruction which permitted a verdict for Ricker even if it had no licenses.

We agree with the first contention. It is clear from the record that Ricker's victualer's license expired on the Tuesday after the first Monday in May 1970. The expiration date is established by statute, *see* Me. Rev. Stats. Ann. tit. 30, § 2752 (1973 Supp.), and expressly stated on the face of the license itself. Feldman testified that he thought the license, which was issued in December 1969, was valid for at least a year. But his assumption, even if in good faith,

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[8] "§ 2751. License required

No person shall be a common innkeeper, victualer or tavernkeeper without a license, under a penalty of not more than $50."

[9] "§ 2482. License; required

No person, corporation, firm or copartnership shall conduct, control, manage or operate, for compensation, directly or indirectly, any catering establishment, or establishments preparing foods for vending machines dispensing foods other than in original sealed packages, or any eating or lodging place, recreational or over-night camp, unless the same shall be licensed by the department."

Note that this statute requires a separate license for each building, while the victualer's license is obtained by the individual operating such buildings.

[10] Midway through the course, two of the seven buildings were inspected and received sanitation licenses. However, one of these licenses was made "conditional" because of health hazards found on the premises. The other buildings used by the Society never had a license during the entire course.

cannot validate an otherwise invalid license. Similarly, the present record conclusively establishes that with two partial exceptions, Ricker did not have sanitation licenses for any of its buildings used by the Society. *See* note 10, *supra.* Therefore, there was no reason for the court to have submitted these questions to the jury.

The issue of whether the absence of these licenses precluded any recovery by Ricker is far more troubling. Maine law controls this question and the Maine court has not spoken on the subject since 1897, when it decided *Randall* v. *Tuell,* 89 Me. 443, 36 A. 910. There, the court construed a victualer's-license statute virtually identical to the one now in effect.[11] It held that a hotel-owner who failed to obtain such license was barred from recovering $28 on a contract with a woman he boarded for two weeks. Although the licensing statute itself did not provide for this ancillary consequence, the Maine court said:

> "It is the general doctrine now settled by great weight of authority, that where a license is required for the protection of the public and to prevent improper persons from engaging in a particular business, and the license is not for revenue merely, a contract made by an unlicensed person in violation of the act is void." *Id.* at 445, 36 A. at 910.

The *Randall* court examined the legislative purpose behind the victualer's-license statute and concluded that it was intended to protect the public rather than to raise revenue. Therefore, the unlicensed hotel-owner did not recover. *See also Stanwood* v. *Woodward,* 38 Me. 192 (1854).

Four years after *Randall,* the Maine court relied upon it in holding that an unlicensed insurance broker could not recover commissions he had earned under an employment

[11] The only difference was that the former statute omitted the words, "or tavernkeeper." *See* n. 8 *supra*

contract. *Black* v. *Security Mut. Life Ass'n,* 95 Me. 35, 49 A. 51 (1901). In addition, the Maine court has cited *Randall* with apparent approval in four other decisions, the most recent being in 1964. *Thacher Hotel, Inc.* v. *Economos,* 160 Me. 22, 197 A.2d 59 (1964); *Lipman* v. *Thomas,* 143 Me. 270, 61 A.2d 130 (1948); *Donahue* v. *City of Portland,* 137 Me. 83. 15 A.2d 287 (1940); *Hinckley* v. *Giberson,* 129 Me. 308, 151 A.2d 542 (1930).[12]

Yet even though the *Randall* decision has never been repudiated or modified since 1897, we are unclear whether the Maine court would apply it today to the facts of the instant case so as to preclude recovery by Ricker either on the contract or in quantum meriut. A number of factors contribute to these doubts.

The most significant one is the extremely large sum of money involved in the present litigation. The *Randall* decision barred recovery of $28. Even giving due weight to inflation, clearly the equitable considerations are far different in the instant case where the Society seeks to bar recovery of $65,780 plus interest. Moreover, if *Randall* did control, the Society logically could argue for return of the $185,000 it had earlier paid on the contract. Thus, Ricker could lose at least $65,780—and possible more than $250,000—simply for its failure to comply with two licensing statutes which expressly provide for combined penalties of not more than $150. *See* Me. Rev. Stats. Ann. tit. 22, § 2487

[12] In *Thacher Hotel,* the court distinguished *Randall* in holding that a hotel-owner's recovery on a management contract was not precluded by an alleged defect in compliance with a liquor license statute. Similarly, in *Lipman,* the court distinguished *Randall* in holding that a poultry supplier's recovery on a sales contract was not precluded by its failure to file a certificate required by statute. The *Lipman* court said of *Randall:* "[T]he decision is based on public policy and the prohibitory character of the statute." 143 Me. at 274, 61 A.2d at 132. Speaking generally of the cases it was distinguishing, the court added, "The purpose of the statutes involved in these cases would be wholly thwarted unless the contracts were held void, and are not therefore decisive of the case at bar." *Id.* at 274-75, 61 A.2d at 132. The citations of Randall in *Donahue* and *Hinckley* were largely collateral to the holdings in those cases.

($100 maximum); *id.* tit. 30, § 2751 ($50 maximum).[13]

The Maine court has never faced this sort of situation.[14] However, a leading commentator, reviewing the holdings of other jurisdictions, has summarized them as follows:

> "It must be remembered that in most cases the statute itself does not require these forfeitures. It fixes its own penalties, usually fine or imprisonment of minor character with a degree of discretion in the court. The added penalty of non-enforceability of bargains is a judicial creation. In most cases, it is wise to apply it; *but when it causes great and disproportionate hardships its application may be avoided.* It is true that the method of avoidance may be by specious distinctions. It may be denied that the statute in the case is for the protection of public health and morality; [footnote omitted] or the court may find that the specific transaction was only sporadic and exceptional and that the unlicensed plaintiff was not really carrying on the business or profession. [footnote omitted]" 6A Corbin on Contracts § 1512, at 714-15 (1962) (emphasis added).

Putting aside the cases applying "specious distinctions," we note two separate methods by which courts in other jurisdictions have avoided unduly harsh application of *Randall*-type rules. First, they have simply made an equitable exception to such rules in the interest of justice. "Justice requires that the penalty should fit the crime; and justice and sound policy do not always require the enforcement of licensing statutes by large forfeitures going not to the state but to repudiating defendants." 6A Corbin, *supra,* at 713. Thus, in *John E. Rosasco Creameries, Inc.* v. *Cohen,* 276 N.Y. 274,

[13] This assumes, of course, that the *Randall* decision on victualer's licenses applies by analogy to sanitation licenses. The Maine court has never so held.

[14] The precise amount at stake in the *Black* case, *supra,* is not stated. However, the insurance commissions there could hardly have amounted to the extremely large sums involved here.

11 N.E.2d 908 (1937), the New York court held enforceable a contract for $11,000 even though the plaintiff milk dealer was unlicensed. Among its reasons, the court noted that "if the contract is declared unenforceable, the effect will be to punish the plaintiff to the extent of a loss of approximately $11,000 and permit the defendants to evade the payment of a legitimate debt." More recently, the California Court of Appeal similarly declined, despite the fact of no license, to invalidate a $40,000 contract. The court stressed the equitable considerations:

> "Despite the illegality of the contract, plaintiff should not be denied relief. The rule requiring courts to withhold relief under the terms of an illegal contract is based on the rationale that the public importance of discouraging such prohibited transactions outweighs equitable considerations of possible injustice as between the parties. [citations omitted] However, the rule is not an inflexible one to be applied in its fullest rigor or under any and all circumstances. A wide range of exceptions has been recognized. [citations omitted] Where the public cannot be protected because the transaction has already been completed, no serious moral turpitude is involved, defendant is the one guilty of the 'greatest moral fault,' and defendant would be unjustly enriched at the expense of plaintiff if the rule were applied, the general rule should not be applied. [citation omitted] In such circumstances, equitable solutions have been fashioned to avoid unjust enrichment to a defendant and a disproportionately harsh penalty upon the plaintiff. [citation omitted]"

Southfield v. *Barrett,* 13 Cal. App.3d 290, 294, 91 Cal. Rptr. 514, 516 (1970). *See also Fomco, Inc.* v. *Joe Maggio, Inc.,* 8 Cal. Rptr. 459, 356 P.2d 203 (1960), *vacated on other grounds,* 55 Cal.2d 162, 10 Cal. Rptr. 462, 358 P.2d 918

(1961); *Schloss* v. *Davis,* 213 Md. 119, 131 A.2d 287 (1957). Second, at least two courts have allowed unlicensed plaintiffs to recover the reasonable value of their work, relying on equitable considerations presented by the facts. *See Wood* v. *Black,* 60 So.2d 15 (Fla. 1952); *Gatti* v. *Highland Park Builders,* 27 Cal.2d 687, 166 P.2d 265 (1946); *cf. Crawford* v. *Holcomb,* 57 N.M. 691, 262 P.2d 782 (1953) (dictum). This alternative would not necessarily require an explicit exception to the *Randall* decision because there the Maine court did not consider the possibility of a restitutionary remedy. Thus, it is possible under Maine law that even if Ricker cannot recover on its contract with the Society, it could still recover in quantum meruit.[15]

Of course, the fact that other jurisdictions have declined to enforce *Randall*-type rules in extreme situations such as the present one would not necessarily affect our interpretation of Maine law if the Maine court had expressed a desire to enforce *Randall* strictly in all situations. Instead, however, the Maine court itself has not precluded recovery on a contract for failure to possess a license since its decision in *Black* in 1901. Also, although *Randall* was cited with apparent approval relatively recently in *Thacher Hotel* and *Lipman, supra,* it is significant that the citations in both of these cases came as the court was distinguishing *Randall,* declining to extend its holding to newer fact situations. Thus, it is considerably uncertain whether the Maine court would extend *Randall* to this case, and if not, which of the alternative approaches outlined above it might follow. In sum, *Randall* cannot, in our view, be deemed a clear precedent controlling the instant case.

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[15] The *Gatti* court stressed that plaintiff had "substantially complied" with the licensing requirement at issue there. In the instant case, at least with respect to the victualer's license, it can be argued that Ricker substantially complied based on the fact that it had a valid license at the time it negotiated the contract with the Society. *See Latipac, Inc.* v. *Superior Court,* 64 Cal.2d 278, 411 P.2d 564, 49 Cal Rptr. 676 (1966).

In this situation the wisest course would be to certify the license issue to the Maine court for decision, pursuant to Me. Rev. Stats. Ann. tit. 4, § 57 (1973 Supp.) and Maine Rule of Civil Procedure.[16] Therefore, in reversing the judgment and remanding for a new trial because of the hearsay error, we instruct the district court first to certify to the Supreme Judicial Court of Maine the question of whether Ricker's failure to comply with the Maine statutes on victualer's licenses and sanitation licenses bars its recovery of any judgment against the Society either in contract or in quantum meruit. In so certifying, it may frame the question in such manner as it deems appropriate and should also ask any additional related questions it deems necessary in order to instruct the jury as to the applicable principles of Maine law. Hence it may wish to inquire whether and to what extent a Maine jury would be entitled to consider the lack of either license in determining whether there was substantial performance of any contract. Obviously, if the Maine court determines that recovery is barred on both grounds, then there will be no need for a new trial.[17]

Reversed and remanded for further proceedings not inconsistent with this opinion.

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[16] The considerations on when to certify recently set forth by the United States Supreme Court in *Lehman Bros.* v. *Schein,* 42 U.S.L.W. 4603 (Apr. 29, 1974) and by the Maine court in *White* v. *Edgar,* A.2d (Me. May 7, 1974), fully support certification in the instant case.

[17] Although several other issues were raised by the parties, we do not reach them in light of our disposition.

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Appendix B.

CERTIFICATION OF QUESTIONS OF LAW TO THE SUPREME JUDICIAL COURT OF MAINE PURSUANT TO ME. REV. STATS. ANN. TIT. 4, § 57 AND MAINE R. CIV. P., RULE 76B.

CIVIL ACTION No. 71-1577-F

HIRAM RICKER & SONS,
v.
STUDENTS INTERNATIONAL MEDITATION SOCIETY.

I. *Nature of the Case*

The plaintiff-appellee, Hiram Ricker & Sons (hereinafter Ricker), a Maine corporation, brought a diversity action in the United States District Court for the District of Massachusetts claiming $77,508.36 due from the defendant-appellant, Students International Meditation Society (hereinafter SIMS), a nonprofit charitable corporation organized under the laws of the State of California, for rooms and food furnished to approximately 1,000 SIMS students at a one-month residential teacher training course held by SIMS at Ricker's premises in Poland Springs, Maine from June 26th to July 28th, 1970. Ricker alleged that money was due: under a written contract with oral modifications and/or on its contract as principal with its agent SIMS and/or for the fair value of services rendered to SIMS at its request and/or in quantum meruit. SIMS answered by way of general denial, breach of contract and filed a counterclaim in the amount of $185,000 alleging that it had overpaid Ricker.

The case was tried before Freedman, J. and a jury beginning June 26, 1973. On July 3, 1973 the jury returned a verdict in favor of Ricker in the amount of $65,780.00 and against SIMS on its counterclaim. SIMS appealed and on July 17, 1974 the United States Court of Appeals for the First Circuit, McEntee, C.J., remanded the case to the District Court for Certification to the Supreme Judicial Court of Maine of certain questions of law and, depending on the opinion of the Maine Court, the Court of Appeals ordered a new trial in accordance therewith having also ordered a new trial due to prejudicial hearsay evidence on the issue of damages. A copy of the opinion is attached hereto (Appendix A). The Court of Appeals expressed some doubt as to the vitality of *Randall* v. *Tuell,* 36 A. 910, 89 Me. 443 (1897),[1] as applied in the instant case in view of the large amounts of money involved and the fact that this doctrine has not been examined for some time.

The parties have stipulated that the Society may be treated as the Appellant and Ricker as the Appellee in the proceedings before the Maine Supreme Judicial Court. (Me. R. Civ. P. 76B, b).

II. *Statement of Facts*

Ricker has owned and operated the Poland Springs complex (hereinafter Poland Springs) since 1962. In 1970 Poland Springs consisted of 2500 acres and was comprised of various buildings, a golf course, beach, and water bottling facility. The oldest buildings were originally built during the 1800s; the newest, the Poland Springs Lodge, in 1967.

[1] See: *Hiram Ricker & Sons* v. *Students International Meditation Society*, No. 73-1273, U.S.C.A., 1st Cir., July 17, 1974, pp. 9-13.

In March of 1966, all of the then Poland Springs buildings were taken over by the Federal Government for a Job Corps residential installation for 1200 girl students and the premises were exclusively so used until the Job Corps installation was closed in December of 1969. During the period of exclusive use and occupancy by the Job Corps the Federal Government repaired and maintained all the buildings at Poland Springs. During this period Ricker constructed the Poland Springs Lodge, a 25-room motel with a coffee shop which was adjacent to the golf course, approximately a mile away from the other buildings. The Poland Springs Lodge and the golf course were operated by Ricker at all material times and were continuously open to the public. When the Job Corps installation was closed in December of 1969 all the buildings which it had occupied were closed down and left unheated, vacant and partially unfurnished. These buildings were not reopened for occupancy until SIMS held its one-month residential teacher training course at Poland Springs in June and July of 1970.

In early 1970 Ricker and SIMS entered into an agreement wherein Ricker agreed to reopen the buildings vacated by the Job Corps and to furnish rooms to SIMS for its students in those buildings and cafeteria style meals to be prepared and served in the Poland Springs House for the one-month SIMS' course. SIMS agreed to obtain all the students, process the registrations, collect the monies, assign the rooms, and to pay Ricker a specified amount per student in accordance with an agreed upon payment schedule. The rates for the rooms, including three cafeteria meals plus a snack, were from $7.00 to $10.00 per day. SIMS collected approximately $105,000 from the students over the amount due Ricker

per course participant. Maid service in the rooms was not to be provided.

There was conflicting testimony at the trial as to the actual number of SIMS students who attended the course and as to oral modifications of the room rates. There was extensive conflicting testimony at the trial as to the quality of the rooms furnished by Ricker to SIMS for its students and as to the quality and quantity of the food served. Ricker presented evidence that the rooms were clean and properly furnished and that the food was proper and abundant; SIMS presented evidence to the contrary.

During the SIMS course, SIMS students and personnel exclusively occupied all Ricker's premises except the Poland Springs Lodge, golf course and beach which were without the main complex and which were open to the public. Approximately 40 SIMS students (who were not enrolled for the full one-month course) stayed at the Poland Springs Lodge. All SIMS students were fed at the Poland Springs House. The students were to wear an identifying badge and Society personnel were responsible for ensuring that only Society students ate in the cafeteria and lived in the dormitories.

It was later determined that Ricker did not hold certain licenses required by Maine statute. These were the "victualer's" license, Me. Rev. Stats. Ann. Title 30, §2751 (1973 Supp.), and the sanitation license, Me. Rev. Stats. Ann. Title 22, §2482 (1965). During the period of the training course Ricker never held a valid victualer's license. Sanitation licenses were issued for two of the buildings on July 13, 1970 after an inspection by the Maine Department of Health and Welfare on July 10. One of those licenses was conditional; the remaining five buildings were not inspected and the requisite licenses were never issued. There was some evidence of administrative misunderstanding and inadvertence, but, as the Court of Appeals noted, these factors ". . . cannot validate an otherwise invalid license." *Hiram Ricker & Sons* v. *Students International Meditation Society,* No. 73-1273, U.S.C.A., 1st Cir., July 17, 1974, at p. 8.

At the conclusion of the course, the Society had paid Ricker $185,000.00. The records of the Society indicated an outstanding balance due Ricker of $50,000.00. Ricker maintained that it was due $77,508.36 and refused an offer of $44,000.00 which the Society contended was reasonable in view of alleged inadequate performance under the contract.

III. *Questions Presented*

1. Does plaintiff-appellee's non-compliance with the victualer's license requirement of Me. Rev. Stats. Ann. Title 30, §2751, preclude its recovery for the claimed balance due on the contract? Does such non-compliance preclude recovery in quantum meruit?

2. Does plaintiff-appellee's partial non-compliance with the sanitation license requirement of Me. Rev. Stats. Ann. Title 22, §2482, preclude its recovery for the claimed balance due on the contract? Does such non-compliance preclude recovery in quantum meruit? Would partial compliance with said statute permit partial recovery?

3. If Ricker is permitted to recover despite its lack of licenses, would the substantial performance exception to the requirement of complete performance apply in these circumstances? If so, should the jury be instructed to consider the degree of the Plaintiff's compliance with the license laws with respect to an issue of whether or not Ricker's performance was substantial?

4. If Ricker is precluded from recovery in both contract and quantum meruit, is it liable to SIMS for restitution of the $185,000 already paid by SIMS for the facilities and services?

By the Court:
FRANK H. FREEDMAN
United States District Judge
Dated: August 30, 1974

Appendix C.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

STATE OF MAINE CUMBERLAND, SS:
HIRAM RICKER & SONS,
PLAINTIFF-APPELLEE
v.
STUDENT INTERNATIONAL MEDITATION SOCIETY,
DEFENDANT-APPELLANT

ORDER

The Court having considered: (1) the motion of defendant-appellant for leave to file ten sets of the three-volume Appendix bearing the cover page marked United States Court of Appeals for the First Circuit No. 73-1273 Hiram Ricker & Sons, Plaintiff-Appellee v. Students International Meditation Society, Defendant-Appellant; and (2) the motion of plaintiff-appellee to reject the defendant-appellant's brief or, in the alternative, to order stricken from said brief certain factual assertions based on the three-volume Appendix sought to be filed by the defendant-appellant; it is hereby ORDERED:

(1) the motion of defendant-appellant is denied, defendant-appellant being denied leave to file any sets of said three-volume Appendix;

(2) the motion of plaintiff-appellee is denied in the alternative that the brief of defendant-appellant be rejected but is granted in the alternative that certain factual assertions made in defendant-appellant's brief be stricken;

(3) the following portions of the brief of defendant-appellant are stricken:

(a) the entirety of pages 8 to 14, inclusive, and of pages 35 and 36; and

(b) those portions of pages 3, 15, 34, 37, 38 and 39 marked by strike lines as shown by document hereto annexed, and incorporated herein as "Exhibit A," consisting of photographic reproductions of said pages.

Dated: February 3, 1975.

For the Court
ARMAND A. DUFRESNE, JR.,
Chief Justice

Exhibit A.

Statement of the Case.

PRIOR PROCEEDINGS.

In this action the plaintiff, Hiram Ricker and Sons (Ricker) claims a balance due under a contract for board and lodging rendered to about 1,000 of the defendant's members during a teaching course which took place between June 26 and July 28, 1970, at the plaintiff's complex of seven hotel buildings in Poland Springs, Maine. Alternatively the plaintiff complains that a balance is due on quantum meruit. [This action was originally brought in the Massachusetts Third District Court of Eastern Middlesex by writ dated August 17, 1970. The case was then transferred to Middlesex Superior Court on the defendant's motion. On October 27, 1970, this action was dismissed by Taveria, J., on the motion of the defendants that the plaintiff failed to file a bond to support its action commenced by trustee process. Thereafter this action was commenced in the United States District Court for the District of Massachusetts by summons dated July 28, 1971, naming the]

. . . . . .

[on services proscribed by the Maine health laws. The plaintiff's non-compliance with the sanitation requirements of Me. Rev. Stats. Title 22, § 2482, entirely precludes its recovery in contract or in quantum meruit] •

II. *Question 1. The Plaintiff-Appellee's Non-Compliance with the Victualers License Requirement of Title 30, § 2751, Precludes the Plaintiff's Recovery Both in Contract and in Quantum Meruit.*

• Material in brackets was deleted by the Maine Supreme Judicial Court.

A. *The law is settled in Maine and the Restatement of Contracts: an innkeeper or victualer may not recover for board and lodging rendered in violation of the innkeeper's and victualer's licensing statute.*

It is conclusively established in this case that Ricker operated throughout this course without the required "victualer's license." Under Title 30, § 2751, of the Maine Revised Laws: "No person shall be a common inn-keeper, victualer or tavern-keeper without a license, under a penalty of not more than $50.00." The Maine Supreme Judicial Court has held specifically that an unlicensed innkeeper may not recover a judgment for board and lodging

. . . . . .

108 N.E. 2d 533 (1952); *Russo* v. *Charles I. Hosmer, Inc.*, 312 Mass. 231, 44 N.E. 2d 641 (1942). The principle is explained succinctly in Chitty, *Contracts* (23d ed. 1968), vol. I, § 1131, p. 531.

> "The general rule is that a party to a contract must perform exactly what he undertook to do. When the issue arises as to whether performance is sufficient the court must first construe the contract in order to ascertain the nature of the obligation (which is a question of law); the next question is to see whether the actual performance measures up to that obligation (which is a question of mixed law and fact in that the court decides whether the facts of the actual performance satisfy the standard prescribed by the contractual provisions defining the obligation). This means that although an appellate court . . . may not normally question a finding of pure fact by the lower

> court or arbitrator, it may review the construction of the contract as to whether or not the facts amount to performance." [Editor's parentheses.]

The threshold question posed by Chitty is the nature of the obligation. In the instant case the contract between the parties required Ricker at least to provide legal bedrooms and meals prepared in accordance with minimum health standards. ~~[With respect to the second question of performance of the obligations, it must be concluded that]~~

. . . . . .

~~[~~for the plaintiff's performance than compliance with the minimum sanitation requirements. Nothing could be more basic to the plaintiff's performance than lawful operation. The plaintiff's performance was less than substantial where it was not even sanitary. The plaintiff's performance did not represent a good-faith effort to render complete performance where the performance was not even legal. At the outset the plaintiff's performance falls short on the first two requirements of substantial performance and good faith-effort.~~]*~~

IV. *Question 4. Ricker should be Liable to SIMS for Restitution of the $185,000 Already Paid by SIMS for the Illegal Facilities and Services.*

The question of the liability of one who furnishes illegal services for restitution of the consideration was discussed in the decision of the Massachusetts Appellate Division in *Remy* v. *Francoer,* 30 Mass. App. Dec. 158 (1965). In that case it was held that an unlicensed real

* Material in brackets was deleted by the Maine Supreme Judicial Court.

estate broker is liable for restitution of a commission obtained without a license.[3]

The decision in *Randall* v. *Tuell* was based on the logic of *Harding* v. *Hagar, supra,* where an unlicensed real estate broker was not permitted to recover a commission. Thus, the similarity of the situation of the broker and the innkeeper has been recognized. [In the instant case, the evidence shows that the plaintiff defied practically every law and regulation applicable to his performance. The plaintiff operated without the required victualers license, and used illegal buildings which were not licensed for use as eating and lodging places by the Department of Health. The plaintiff's kitchen was way below the minimum standards for an eating place, violating practically every regulation of the Department of Health. These regulations which were violated are intended to prevent the spread of communicable diseases and deserve vigilant enforcement by the courts.

[The plaintiff, in ignoring the Maine health laws, exposed over 1,000 persons to unsanitary conditions and inexcusable health hazards for which the plaintiff now seeks to recover even more than the $185,000 which the plaintiff has obtained. The circumstances of the SIMS course should require the plaintiff to repay the entire amount which the plaintiff has obtained from SIMS] *

Conclusion.

For the reasons stated above the defendant respectfully submits that:

---

[3] Note this case is misquoted in the editor's headnote and in Massachusetts General Laws Annotated notes to chapter 112, § 87 CCC, where the opposite proposition is stated.

* Material in brackets was deleted by the Maine Supreme Judicial Court.

With respect to question 1, the plaintiff-appellee's noncompliance with the victualers license requirement of Title 30, § 2751, precludes its recovery both in contract and in quantum meruit.

With respect to question 1, the plaintiff-appellee's noncompliance with the sanitation license requirement of

Appendix D.

STATE OF MAINE
SUPREME JUDICIAL COURT

Docket No. CUM 74-32

HIRAM RICKER & SONS,
PLAINTIFF-APPELLEE

v.

STUDENTS INTERNATIONAL
MEDITATION SOCIETY
DEFENDANT, APPELLANT

Appellants Motion to Dismiss Certification

Now comes the Appellant Students International Meditation Society and moves that this proceeding be dismissed for the following reasons:

1. This Court, by its Order dated February 3, 1975, has refused to permit filing of the relevant portions of the Federal Court record of these proceedings and has censored from the Appellant Society's brief, its most important argument. The refusal to permit the Federal Court record is contrary to the stated purposes of Rule 76B(c) that ". . . the parties . . . would have all the protections that go with a fully adversary proceeding involving a concrete set of facts." 16 Maine L. Rev. 33, 41 (1964): *Certification: A Procedure for Cooperation between State and Federal Courts.* This case is now before this Court "divorced from the complete factual setting in which (it)

may be more carefully understood." See Wright, *Federal Courts* 419, Wright Book Review of *Maine Civil Practice*, 22 Maine L. Rev. 511, 513 (1970). (Note also Maine Civil Practice example of Rule 76B proceeding refers to "usual" practice of including entire Federal record with certification). Facts of record which are critical to understanding the controversy between the parties as it relates to Maine Law have vanished en route from the First Circuit to the Maine Supreme Judicial Court. The censoring of the Appellant's brief and argument is a prejudicial violation of fundamental due process of law.

2. The express intent of the First Circuit Court of Appeal in ordering this certification is not fulfilled by the existing certification in which critical facts have been suppressed from consideration. Starting at page 9 of its opinion, the First Circuit Court stated:

"Yet even though the *Randall* decision has never been repudiated or modified since 1897, we are unclear whether the Maine Court would apply it today *to the facts of the instant case* so as to preclude recovery by Ricker either in contract or in quantum meruit. A number of factors contribute to these doubts.

The most significant one is the extremely large sum of money involved in the present litigation . . .

The Maine Court has never faced *this sort of situation* . . .

. . . . . .

Therefore, in reversing and remanding for a new trial because of the hearsay error, we instruct the District Court first to certify to the Supreme Judicial Court of Maine the question of *whether Ricker's failure to comply with Maine Statutes on victualer's licenses and sanitation licenses* bars its recovery of any judgment against the Society either in contract or in quantum meruit."

Opinion pp. 9-13. Thus, the First Circuit Court expressly intended that the particular facts of the instant case should be considered in light of Maine Law. The First Circuit Court acknowledged at footnote 10 that one of Ricker's buildings was issued a Title 22 Sanitation License stamped "CONDITIONAL" because of health hazards found on the premises. Opinion p. 7. The evidence of illegal health hazards shows that Ricker's violation of the Title 22 license requirement penetrates far beyond a technical failure to hold a license document and reaches to the essential health regulations which are controlled by the Title 22 license law. Moreover, there is no authority for a "CONDITIONAL" license under Title 22. The existing certification represents an academic hypothetical situation where an innkeeper merely failed to hold the license document. In the actual controversy between the parties the innkeeper not only failed to hold the license document, but he defied substantially all of the health regulations controlled by the Title 22 license law, in respect to 1,000 persons during a 28 day period. These are critical facts of record in *the instant case.* This Court does not have jurisdiction to entertain an academic hypothetical case which is substantially at variance from the true facts of this controversy. *In Re*: *Richards* 223 A. 2d 827 (1966).

3. The Appellant Society has exhausted the available avenues to avoid the errors which are now inherent in this certification, including motion to file the record in

this Court and motion to amend the certification in the Federal Court.

The appellant is not required to exhaust any further corrective efforts prior to entry of a final judgment.

Respectfully submitted,

By their attorneys
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Certificate of Service.

I, George R. Halsey, of Deutsch & Krasnow certify that on February 24, 1975, I gave notice of the filing of the foregoing Appellants Motion to Dismiss Certification by mailing a copy thereof, postage prepaid to: Enid Starr, Esq., 18 Tremont Street, Boston, Massachusetts 02108, Gregory Tselekis, One Monument Square, Portland, Maine 04111, Vincent McKusick, One Monument Square, Portland, Maine 04111 and Hon. Sidney W. Wernick, Justice, Supreme Judicial Court, 142 Federal Street, Portland, Maine 04112.

GEORGE R. HALSEY

Appendix E.

STATE OF MAINE
SUPREME JUDICIAL COURT

HIRAM RICKER & SONS
PLAINTIFF-APPELLEE
vs.
STUDENT INTERNATIONAL
MEDITATION SOCIETY
DEFENDANT-APPELLANT

ORDER

WHEREAS the Defendant-Appellant, Students International Meditation Society, on February 10, 1975 has filed a motion to stay further proceedings on the certification pending in this Court at Law Court Docket No. Cum-74-32 and on February 25, 1975 did file another motion to dismiss the certification entirely, and

WHEREAS the motion to stay has now become moot, and

WHEREAS this Court has given full consideration to the Defendant-Appellant's motion to dismiss the certification,

NOW, THEREFORE, IT IS HEREBY ORDERED that the Defendant-Appellant's motion for a stay is dismissed for mootness and its motion for dismissal of the certification in its entirety is denied.

For the Court
ARMAND A. DUFRESNE, JR.
Chief Justice

DATED: February 27, 1975.

Appendix F.

HIRAM RICKER & SONS,
v.
STUDENTS INTERNATIONAL MEDITATION SOCIETY

POMEROY, J.

This case is before us on a certification of questions of law from the District Court of the United States, District of Massachusetts, pursuant to *4 M.R.S.A. 57*. The certification was directed by the United States Court of Appeals for the First Circuit in *Hiram Ricker & Sons* v. *Students International Meditation Society*, 501 F.2d 550 (1st Cir. 1974).

The *"Nature of the Case"* and *"Statement of Facts"* set out in the certificate may be summarized as follows:

The plaintiff-appellee, Hiram Ricker & Sons, a Maine corporation, brought an action for breach of contract in the District Court of Massachusetts, claiming $77,508.36 due from the defendant-appellant, SIMS, a California charitable corporation. Jurisdiction is based on diversity of citizenship.

Ricker and SIMS had entered into an agreement wherein Ricker agreed to furnish lodging and food to approximately 1,000 SIMS students at a one-month teacher training course to be held at Ricker's premises in Poland Spring, Maine, from June 26th to July 28th, 1970.

The Poland Spring's complex, once a fashionable spa for those with the leisure and means to enjoy its amenities, was sold in 1962 to Hiram Ricker & Sons. Ricker subsequently leased the premises to the Federal Government for a Job Corps residential installation.

In December 1969 the installation was closed. Not long thereafter Ricker agreed with SIMS to reopen the buildings vacated by the Job Corps and to furnish both lodging and food to SIMS' students. The one-month course was held at the Poland Spring complex as scheduled, and at the conclusion of the course, SIMS had paid Ricker $185,000.00. A dispute arose between the parties as to the amount of the outstanding balance due Ricker on the contract, and this action followed.

Ricker premised its right to recover on alternative theories; that the money was due either on the contract or in quantum meruit. SIMS responded with a counterclaim for the $185,000.00 it had paid Ricker.

A jury trial resulted in a verdict for Ricker in the amount of $65,780.00 and against SIMS on its counterclaim.

At trial, the evidence conclusively established that Ricker's victualer's license, (*30 M.R.S.A. 2751*), issued in December 1969, had expired in May 1970. Similarly, the record established that Ricker did not have sanitation licenses for all its premises during the entire period,[1] (*22 M.R.S.A. 2482*). On appeal the First Circuit Court recognized that the last time the Maine Court had had occasion to decide whether failure to comply with licensing statutes precluded recovery on a contract was over three-quarters of a century ago in a case involving $28.00 due an innkeeper. (*Randall* v. *Tuell,* 89 Me. 443, 36 A. 910 (1897)). The Court was understandably in doubt as to the continuing vitality of the rule enunciated in *Randall,*

> *"... that where a license is required for the protection of the public, and to prevent improper persons from engaging in a particular business, and the license is not for revenue merely, a contract made by an unlicensed person in violation of the act is void."* 36 A. at 910.

[1] Two of the seven buildings in the complex were inspected and issued licenses halfway through the SIMS course. One of the licenses issued was made *"conditional"* due to discovered health hazards.

In 1965, Maine enacted its certification statute to provide a mechanism by which the Federal Courts, District and Appellate, could present questions of state law directly to the Supreme Judicial Court sitting as the Law Court. *4 M.R.S.A. 57.* The Court has acted on four certification cases since enactment of the statute.[2] Each experience with the procedure has occasioned our exploration of the purpose and scope of certification and we consider it to be appropriate now to review the legal principles which have emerged from our inquiries.

1. The action of the Law Court in accepting and deciding questions of law certified from a Federal Court is a valid exercise of *"judicial power."* 223 A.2d at 832.

2. Where the certified question of State law projects alternatives of answer, at least one of which, were it to be the answer of this Court, would have controlling impact on a decision of the merits of the cause generally, this Court will answer the question presented. 220 A.2d 248; 254 A.2d 46; 320 A.2d at 674.

3. The Court will respond to questions only when it is apparent from the certification itself that all material facts have been either agreed upon or resolved, and the case is in such posture that our decision will, in at least one alternative, be *"determinative of the cause."* 320 A.2d 674-75 n. 10.

[2] *Norton* v. *Benjamin,* Me., 220 A.2d 248 (1966); *In Re Richards,* Me., 223 A.2d 827 (1966); *Pierce* v. *Secretary of Health, Education, and Welfare,* Me., 254 A.2d 46 (1969); *White* v. *Edgar,* Me., 320 A.2d 668 (1974).

4. *"Determinative of the cause"* encompasses *any* disposition by which the Federal controversy *is terminated.* 320 A.2d at 677.

5. It is the stated policy of this Court that when there is involved in a Federal cause a question whether a Maine statute violates the Constitution of Maine, and:

1) the Federal Court considers the question to lie within its *"pendent"* jurisdiction to decide;
2) the Maine Constitution affects the statute's validity differently from the Federal Constitution invoked to invalidate it; and
3) one alternative answer by this Court will finally dispose of the Federal proceeding thereby avoiding Federal decision of the Federal constitutional issue,

this Court will give liberal and plenary implementation to the certification process. 320 A.2d at 683-684.

We note at the outset the claim advanced by the appellee that this case is not yet in such posture that it may properly be considered by this Court. Specifically, it is appellee's position that a threshold issue as to whether or not compliance with the licensing statutes was *required* must be addressed by us before consideration of the questions certified. This is so appellee says, because the Federal Court never resolved that issue.

Questions #1 and #2 of the instant certification ask us to decide whether appellee's *"non-compliance with the victualer's license requirement"* and *"partial non-compliance with the sanitation license requirement"* preclude its recovery either on the contract or in quantum meruit.

Question #3 asks whether the substantial performance exception to the requirement of complete performance would apply *"If Ricker is permitted to recover despite its lack of*

licenses;" and if so, whether the jury should be instructed to consider *"the degree of the plaintiff's compliance with the license laws."*

We consider it to be *"apparent from the certification itself"* that the question whether the licenses involved were required by Ricker must necessarily have been decided in the affirmative by the Federal Court prefatory to its reaching the issue of whether non-compliance or partial compliance would preclude recovery for services rendered.

Thus, the issue squarely presented by this certification is whether or not this Court's decision in *Randall* v. *Tuell,* supra, is still viable, thus barring the right of appellee to recover the value of the services and lodging it supplied the appellant.

The licensing statute construed in *Randall* was identical to the one now in force save for omission of the words *"or tavernkeeper."*

The present statute provides that

> *"No person shall be a common innkeeper, victualer, or tavernkeeper without a license, under a penalty of not more than fifty dollars $50.00."* *30 M.R.S.A. 2751*

The *Randall* Court construed the language of the statute as demonstrating a legislative intent *"to prevent improper persons from engaging in a particular business"* in the interest of public protection. Had the statute been enacted for revenue purposes only instead of being prohibitory, the Court concluded, the innkeeper could properly recover on his contract even though he was in violation of the licensing requirement.

Randall has been cited by this Court in only five decisions since it was decided. In *Black* v. *Security Mutual Life Association,* 95 Me. 35, 49 A. 51 (1901), the Court was asked

to decide whether an unlicensed insurance broker could recover from his Company commissions earned under a contract of employment with the Company.

The relevant licensing statute provided:

> "*. . . if any person solicits, receives or forwards any risk or application for insurance to any company, without first receiving such license, or fraudulently assumes to be an agent and thus procures risks and receives money for premiums, he forfeits not more than fifty dollars for each offense; but any policy issued on such application binds the company if otherwise valid.*" 95 Me. 35, 36.

Relying on *Randall,* the Court held recovery was barred despite the fact that the licensing statute expressly provided any *policy* issued by an unlicensed broker was not void.

> "*The purpose of the statute is undoubtedly for the protection of the public. It is clearly not for revenue. The license fee required was only the sum of two dollars. True, the statute referred to provides that a policy issued in such a case shall not thereby be void, but the contract of insurance is not the one under consideration here; it is the contract between the company and the plaintiff by virtue of which the latter performs services in obtaining applications for insurance, which the statute prohibits, unless the person performing such service has a license therefor.*" 95 Me. 35, 37.

In *Donahue* v. *City of Portland,* 137 Me 83, 15 A.2d 287 (1940), the precise issue before the Court was whether an ordinance which imposed a different annual fee on those victualers who sold beer from those who did not was discriminatory and void. In upholding the ordinance, the

Court discussed *Randall* only collaterally as support for the proposition that an ordinance passed in pursuance of statutory authority is presumptively valid.

The *Randall* decision was distinguished in *Lipman* v. *Thomas,* 143 Me. 270, 61 A.2d 130 (1948). The *Lipman* Court had before it the question whether failure to file a partnership certificate in violation of a statute barred recovery on account for goods supplied by the partners.

Deciding that recovery was available because the purpose of the filing provision was not to protect those who obtained credit from the partnership, the Court went on to more fully describe the statute.

> "*The statute does not disclose directly or by implication that it was the intention of the legislature to invalidate business transactions otherwise valid because of the failure of the plaintiffs to comply with its provisions. The statute does not declare the transaction void. It does not forbid doing business before complying with its provisions. It does not forbid recovery. It does not provide for forfeiture. . . .*
>
> "*The failure of the plaintiffs to file the certificate merely subjected them to the penalty provided, namely, a fine of $5 for each day of noncompliance after commencing business. No further penalty is attached.*" 61 A.2d 130, 132.

Randall was not controlling the *Lipman* Court concluded, because the *Randall* Court had found that the purpose of the statute involved in *Randall* would have been "*wholly thwarted unless the contracts were held void.*"

The most recent decision to discuss the *Randall* rule is *Thacher Hotel, Inc.* v. *Economos,* 160 Me. 22, 197 A.2d 59 (1964). Chief Justice Williamson, speaking for the Court, declined to extend the application of *Randall* to the circum-

stances of the case then before it. In *Thacher,* the plaintiff hotel had contracted with the defendant to manage the hotel's dining room. When the hotel sued for an unpaid balance due under the *"management contract,"* the defendant claimed the contract was illegal because the plaintiff, not being a *"bona fide hotel"* as defined by the licensing statute, should not have been granted a liquor license. Chief Justice Williamson noted first that, absent the applicability of the liquor law, there was nothing inherently wrongful about the parties' contract. Moreover, the contract was not entered into in furtherance of an unlawful purpose so as to be manifestly against public policy.

Critical to the Court's determination that recovery was not barred, however, was the conclusion that the license itself was valid. That being so, *Randall,* although cited with apparent approval as illustrative of the principle of non-recovery where the claim is based on an illegal contract, was not decisive.

It is clear from the above discussion that the rule announced in *Randall* v. *Tuell,* supra, nearly a century ago, while neither rejected nor modified since, has been found controlling on only one other occasion.[3] Even more significant, however, is the fact that the rule has never been re-examined in light of a similar factual framework to that in which the case now before us is cast.

The statute which occasioned both *Randall* and the case now before us imposes a specific penalty upon a *"common innkeeper or victualer,"* who fails to secure an annual license to engage in his occupation. The provision is part of a comprehensive statutory scheme which describes the composition and duties of the *"licensing board"* (*30 M.R.S.A. 2752*); provides for the securing of a bond and pay-

[3] *Black* v. *Security Mutual Life Association,* supra.

ment of recording fees (*§2754*); sets out the conditions under which a license may be revoked or suspended (*§2757*), and describes the restrictions and regulations under which a licensee is obligated to conduct his business (*§2801* et seq.).

The statute further provides the mechanism for prosecuting *violations* of the licensing requirement by authorizing both the licensing board and *"[a]ny citizen of the State"* to prosecute *"by complaint, indictment or civil action."* (*§3001*). All penalties in such actions, recoverable as often as the offense is repeated, inure to the benefit of the town where the offense is committed. *30 M.R.S.A. 3001; State* v. *Johnson,* 65 Me. 362 (1876).

We note at the outset there is no provision in the innkeeper licensing statute which imposes any penalties or forfeitures *in addition to* the fifty dollars prescribed in *Section 2751* for failure to secure a license. We also note there is no express provision authorizing injunctive relief. This is in contra-distinction to *Section 2504,* for example, which provides for the licensing of persons conducting closing-out sales. That statute expressly provides for injunctive relief and purports to confer jurisdiction in the Superior Court.[4]

The Court in *Randall* v. *Tuell,* supra, rested its decision to bar recovery on the contract by a non-complying innkeeper on its conclusion that the statute was intended to prohibit the exercise of the business, and by inference, recovery on any contract entered into in contravention of such prohibition.

> *"If the statute in question was enacted for revenue purposes only, instead of being prohibitory, the plaintiff might properly recover. But we are satisfied that*

[4] See also *Section 2451,* et seq., (licensing of auto junk dealers), imposing *criminal* penalties for failure to secure the necessary permit.

such was not the intention of the legislature. The statute being by implication prohibitory by reason of the penalty attached, the plaintiff is precluded from recovering. Basing his action upon a clear violation of the statute, he cannot successfully invoke the aid of the court." 89 Me. 443, 448.

We do not so construe the licensing provision. In the absence of any *express* legislative intention to declare contracts made and performed by unlicensed innkeepers void, we will not infer such intention.[5]

The statute fixes its own penalties. The additional penalty of non-enforceability of agreements is a judicial engraftment we now expressly reject as unduly harsh and unsound.

> "*Why should one party to a contract be allowed to avoid the payment of debts he has contracted to pay and thus gain an unconscionable advantage because the other party deliberately, or through inability or mere oversight, has failed to discharge an obligation to the city when there is available to the city a . . . remedy for the wrong. . . . As the law has been construed for a long time by this and most other courts of last resort,*

[5] We note that in certain instances where the Legislature has intended that the public be protected against the potential fraud and incompetence of unlicensed persons, it has expressly mandated that contracts made in breach of the statute are not enforceable by the non-complier. See for example, *4 M.R.S.A. 807*, denying recovery for services rendered to an attorney who has not secured the requisite certificate of qualification; *20 M.R.S.A. 1754*, barring those who teach a public school without first obtaining a state teacher's certificate from receiving pay therefor, and directing forfeiture of any amounts received as wages for such illegal teaching; *32 M.R.S.A. 4003*, making it unlawful for a licensed real estate broker to share his commission with an *unlicensed* broker "*in consideration of services performed or to be performed by such unlicensed person.*"

> *it appears to furnish an inducement to evil-disposed persons to watch opportunities to contract with any one upon whom a license tax has been imposed, at a time when, for perhaps only a day, he has neglected to pay his tax, and thus acquire merchandise or service without payment therefor.*" (*Manker* v. *Tough*, 79 Kan. 46, 98 P. 792, 795 (1908).

The *Manker* Court went on to reason that the denial of a remedy on such a contract is "*in effect, tantamount to a penalty or fine in the amount the party by the terms of the contract is entitled to recover . . . .*" Such a rule, allowing one party to penalize another for his own benefit for an act which occasioned him no loss, the Court concluded, "*would seem to be exotic to the jurisprudence of this state, . . .*" 98 P. at 795.

Cases in other jurisdictions which have discussed the question of enforceability of contracts under similar licensing statutes demonstrate a reluctance to apply *Randall*-type rules where such application would produce an unduly harsh result. In some cases, the decision turns on the same distinction made in *Randall*, viz. whether the purpose of the statute is the collection of revenue (in which case the express statutory penalties are held to be exclusive), or the protection of public health and safety (in which case non-enforceability of the bargain may be inferred as an additional penalty). See for example, *Patterson* v. *Southern R. Co.*, 214 N.C. 38, 198 S.E. 364 (1938); *Albertson & Co.* v. *Shenton*, 78 N.H. 216, 98 A. 516 (1916); *Sunflower Lumber Co.* v. *Turner Supply Co.*, 158 Ala. 191, 48 So. 510 (1909). See also 6A *Corbin on Contracts* §1512, at 710-713. Other courts have eschewed such distinctions, but have allowed recovery under circumstances where equitable considerations weighed heavily against the imposition of a forfeiture. *John E.*

Rosasco Creameries, Inc. v. *Cohen,* 276 N.Y. 274, 11 N.E. 2d 908 (1937), ($11,000 milk dealer's contract); *Southfield* v. *Barrett,* 13 Cal. App. 2d 290, 91 Cal. Rptr. 514 (1970), ($40,000 contract); *Schloss* v. *Davis,* 213 Md. 119, 131 A.2d 287 (1957).

In some instances, the Courts have circumvented rigid application of the rule by determining that a license was not required because the transaction was an isolated one and the plaintiff not really practicing the profession or engaged in the business described in the licensing statute. *Barriere* v. *DePatie,* 219 Mass. 33, 106 N.E. 572 (1914); *Kolb* v. *Burkhardt,* 148 Md. 539, 129 A. 670 (1925).

Finally, a few unlicensed plaintiffs have been allowed to recover, on a theory of quantum meruit, for the fair value of their work where such recovery would avoid inequities and unjust enrichment. *Wood* v. *Black,* Fla., 60 So. 2d 15 (1952); *Gatti* v. *Highland Park Builders,* 27 Cal. 2d 687, 166 P. 2d 265 (1946); *Linder Appraisal Corp.* v. *H. Mabel Frewil Corp.,* 72 Misc. 2d 1041, 340 N.Y.S. 2d 242 (1973).

We are satisfied it would be unjust and inequitable for us to rule that Ricker's noncompliance with the licensing statute makes its contract with SIMS void. We will not so hold in any case unless the Legislature has mandated such result by specific terms in the statute. To the extent *Ranall* v. *Tuell,* supra, and *Black* v. *Security Mutual Life Association,* supra, held, otherwise, they are overruled.

In discussing whether a statute imposing a penalty upon the peddling of wares impliedly rendered any sales void, this Court has said:

> *"It does not make the sale void, unless by implication, and that a forced one. But forfeitures and the confiscation of honest debts are not to be implied. They must be the results of express legislation, and not a matter*

> *of inference . . . . When the unlawfully traveling peddler has paid the fine imposed for his unlawful traveling and his* 'property thus unlawfully carried' *round by him for sale has been declared forfeited, the penalties of the statute are exhausted. It would be judicial legislation to add to the penalties of the statute."* *Burbank* v. *McDuffee,* 65 Me. 135, 136-37 (1876).

See also *Harris* v. *Runnells,* 12 Howard (U.S.) 79 (1851).

In view of the foregoing discussion, we answer in the negative to the first part of the first certified question:

> *"1. Does plaintiff-appellee's non-compliance with the victualer's license requirement of Me. Rev. State. Ann., Title 30, §2751, preclude its recovery for the claimed balance due on the contract?"*

The second part of that question:

> *"Does such non-compliance preclude recovery in quantum meruit?"*

need not be reached.

The second certified question relates to Ricker's partial non-compliance with the sanitation license requirement of *22 M.R.S.A. 2482.* That statute provides:

> *"No person, corporation, firm or copartnership shall conduct, control, manage or operate, for compensation, directly or indirectly, any catering establishment, or establishments preparing food."*

Like the innkeeper provision, there is a penalty imposed for failure to secure the requisite sanitation license. *22 M.R.S.A. 2487.*

We consider the same reasoning which led us to conclude that Ricker's non-compliance with the innkeeper li-

censing statute did not bar its recovery on the contract, is applicable as well to Ricker's failure to comply with the sanitation statute. The statute directs a specific penalty; and we cannot infer any in addition thereto.

Part one of the second certified question, therefore:

> *"Does plaintiff-appellee's partial non-compliance with the sanitation license requirement of Me. Rev. Stats. Ann. Title 22, §2482, preclude its recovery for the claimed balance due on the contract?"*

must be answered in the negative.

Our response to the first part of the second certified question obviates the necessity of our reaching the second and third parts of that question:

> *"Does such non-compliance preclude recovery in quantum meruit?"*
> *"Would partial compliance with said statute permit partial recovery?"*

In the third question certified to this Court, we are asked:

> *"If Ricker is permitted to recover despite its lack of licenses, would the substantial performance exception to the requirement of complete performance apply in these circumstances? If so, should the jury be instructed to consider the degree of the Plaintiff's compliance with the license laws with respect to an issue of whether or not Ricker's performance was substantial?"*

We answer both parts of this question in the negative. We have said Ricker's failure to secure the requisite licenses has no bearing whatsoever on the enforceability of the contract.

It follows then, such failure does not effect a limitation on the extent of recovery.

Deciding as we do that Maine law does not preclude Ricker from recovering on the contract, we have no need to reach the issue raised in the fourth certified question:

> *"If Ricker is precluded from recovery in both contract and quantum meruit, is it liable to SIMS for restitution of the $185,000 already paid by SIMS for the facilities and services?"*

The Clerk will transmit these instructions to the District Court of the United States, District of Massachusetts.

So ordered.

Weatherbee, J., did not sit.

All Justices Concurring.

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Appendix G.

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT.

HIRAM RICKER & SONS,
PLAINTIFF-APPELLEE
v.
STUDENTS INTERNATIONAL
MEDITATION SOCIETY,
DEFENDANT-APPELLANT

Notice of Appeal to the Supreme Court of the United States

Notice is hereby given that the Students International Meditation Society, the Appellant above named, hereby appeals to the Supreme Court of the United States from the final decree of the Supreme Judicial Court for the State of Maine denying the Appellant's Motion to Dismiss entered in this action February 27, 1975.

This appeal is taken pursuant to 28 U.S.C. § 1257 (2).

Respectfully submitted

STUDENTS INTERNATIONAL
MEDITATION SOCIETY
By its attorneys
GEORGE R. HALSEY
DEUTSCH & KRASNOW
141 Milk Street
Boston, Massachusetts 02109
and
GREGORY TSELEKIS
BERNSTEIN, SHUR, SAWYER
& NELSON
One Monument Square
Portland, Maine 04111

Certificate of Service.

I, George Halsey, Esq., of Deutsch & Krasnow, 141 Milk Street, Boston, Massachusetts, hereby certify that copy of this notice has been served upon counsel for Hiram Ricker & Sons by mail postage pre-paid as follows: Enid Starr, Esq., 18 Tremont Street, Boston, Massachusetts, Vincent McKusick, One Monument Square, Portland, Maine.

GEORGE R. HALSEY

Appendix H.

IN THE SUPREME COURT OF THE UNITED STATES

On Writ of Certiorari to the
MAINE SUPREME JUDICIAL COURT

HIRAM RICKER & SONS
PLAINTIFF-APPELLEE

v.

STUDENTS INTERNATIONAL MEDITATION SOCIETY
DEFENDANT-APPELLANT

Motion for Extension of Time to Docket Appeal.

Appellant moves the Court that the time within which Appellant may docket its appeal be extended from May 28, 1975, to July 28, 1975.

In support of this motion Appellant states that it has noticed an appeal from the Supreme Judicial Court for the State of Maine of the denial of Appellant's motion for dismissal. The action in the Maine Supreme Judicial Court is a certification proceeding mandated by the First Circuit Court of Appeals in *Hiram Ricker & Sons* v. *Students International Meditation Society,* No. 73-1273, U.S.C.A., 1st Cir., July 17, 1974, 501 Fd 2d 550, which presents novel procedural questions in certification procedure and constitutional rights of the Appellant. The questions certified have been argued by the parties on April 1, 1975 and are pending the issuance of an opinion by the Maine Supreme Judicial Court. A decision favorable to the Appellant herein would render the noticed

appeal moot. A decision adverse to the Appellant herein would add a number of issues to be presented to this Court. Therefore, in order to avoid possible moot proceedings or duplication of proceedings, an extension of sixty days time is respectfully requested.

Respectfully submitted,

DEUTSCH & KRASNOW
141 Milk Street
Boston, Massachusetts 02109
Telephone: 542-8855
May 16, 1975

I, George R. Halsey, an attorney in the office of Messrs. Deutsch & Krasnow, attorneys of record for Students International Meditation Society, Appellant herein, depose and say that on the 16th day of May, 1975, I served a copy of the foregoing motion for extension on Hiram Ricker & Sons, Appellee herein, by delivering the same to Vincent McKusick, Esq., One Monument Square, Portland, Maine 04111.

GEORGE R. HALSEY

Subscribed and sworn to by me at Boston this 16th day of May, 1975.

Notary Public

Appendix I.

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

HIRAM RICKER & SONS,
PLAINTIFF-APPELLEE
v.
STUDENTS INTERNATIONAL
MEDITATION SOCIETY,
DEFENDANT-APPELLANT

Notice of Appeal to the Supreme Court of the United States

Notice is hereby given that the Students International Meditation Society, the Appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Judicial Court for the State of Maine entered in this action July 24, 1975.

This appeal is taken pursuant to 28 U.S.C. § 1257 (2).

Respectfully submitted
STUDENTS INTERNATIONAL
MEDITATION SOCIETY
By its attorneys
GEORGE R. HALSEY
DEUTSCH & KRASNOW
141 Milk Street
Boston, Massachusetts 02109
and
GREGORY TSELEKIS
BERNSTEIN, SHUR, SAWYER
& NELSON
One Monument Square
Portland, Maine 04111

Dated: August 5, 1975

Certificate of Service

I, George R. Halsey, Esq., of Deutsch & Krasnow, 141 Milk Street, Boston, Massachusetts, hereby certify that copy of this notice has been served upon counsel for Hiram Ricker & Sons by mail postage pre-paid on August 5, 1975, as follows: Enid Starr, Esq., 18 Tremont Street, Boston, Massachusetts, Vincent McKusick, One Monument Square, Portland, Maine.

GEORGE R. HALSEY

Appendix J.

Maine Revised Statutes, Title 4.

§ 57. Jurisdiction; disposition of cases; technical errors in pleading and procedure

The following cases only come before the court as a court of law: Cases on appeal from the Superior Court or a single Justice of the Supreme Judicial Court; questions of law arising on reports of cases, including interlocutory orders or rulings of such importance as to require, in the opinion of the justice, review by the law court before any further proceedings in the action; agreed statement of facts; cases presenting a question of law; all questions arising in cases in which equitable relief is sought; motions to dissolve injunctions issued after notice and hearing or continued after a hearing; questions arising on habeas corpus, mandamus and certiorari and questions of state law certified by the federal courts. They shall be marked "law" on the docket of the county where they are pending, and there continued until their determination is certified by the clerk of the law court to the clerk of courts of the county and the court shall immediately after the decision of the question submitted to it make such order, direction, judgment or decree as is fit and proper for the disposal of the case, and cause a rescript in all civil actions, briefly stating the points therein decided, to be filed therein, which rescript shall be certified by the clerk of the law court to the clerk of courts of the county where the action is pending and to the Reporter of Decisions. If no further opinion is written out, the reporter shall publish in the next volume of reports thereafter issued the case, together with such rescript, if the reporter deems the same of sufficient importance for publication.

When the issues of law presented in any case before the law court can be clearly understood, they shall be decided, and no case shall be dismissed by the law court for technical errors in pleading alone or for want of proper procedure if the record of the case presents the merits of the controversy between the parties. Whenever, in the opinion of the law court, the ends of justice require, it may remand any case to the court below or to any justice thereof for the correction of any errors in pleading or procedure. In remanding said case, the law court may set the time within which said correction shall be made and said case reentered in the law court.

When it shall appear to the Supreme Court of the United States, or to any court of appeals or district court of the United States, that there are involved in any proceeding before it one or more questions of law of this State, which may be determinative of the cause, and there are no clear controlling precedents in the decisions of the Supreme Judicial Court, such federal court may certify any such questions of law of this State to the Supreme Judicial Court for instructions concerning such questions of state law, which certificate the Supreme Judicial Court sitting as a law court may, by written opinion, answer.

Appendix K.

RULE 76B. CERTIFICATION OF QUESTIONS OF LAW BY FEDERAL COURTS

(a) When Certified. When it shall appear to the Supreme Court of the United States, or to any of the Courts of Appeal or District Courts of the United States that there are involved in any proceeding before it one or more questions of law of this state which may be determinative of the cause and that there are no clear controlling precedents in the decisions of the Supreme Judicial Court, such federal court may, upon its own motion or upon request of any interested party, certify such questions of law of this state to the Supreme Judicial Court sitting as the Law Court, for instructions concerning such questions of state law.

(b) Contents of Certificate. The certificate provided for herein shall contain the style of the case, a statement of facts showing the nature of the case and the circumstances out of which the question of law arises, and the question or questions of law to be answered. Subject to other direction by the Supreme Judicial Court, the certificate shall also specify which party shall be treated as the appellant in the proceedings before the Supreme Judicial Court. As amended eff. Dec. 31, 1967.

(c) Preparation of Certificate. The certificate may be prepared by stipulation or as directed by such federal court. When prepared and signed by the presiding judge of said federal court, 12 copies thereof shall be certified to the Supreme Judicial Court by the clerk of the federal court and under its official seal. The Supreme Judicial

Court may, in its discretion, require the original or copies of all or any portion of the record before the federal court to be filed with said certificate where, in its opinion, such record may be necessary in answering any certified question of law.

(d) Costs of Certificate. The cost of the certificate and filing fee shall be equally divided between the parties unless otherwise ordered by the Supreme Judicial Court.

(e) Hearing before the Law Court. For the purpose of measuring the time for filing briefs and for holding the oral argument, the filing and docketing of the certificate in the Supreme Judicial Court shall be treated the same as the filing and docketing of the record on an appeal from the Superior Court. The hearing shall be by briefs and oral argument, both of which shall be controlled by the same rules as briefs and oral argument on appeals. As amended eff. Dec. 31, 1967.

(f) Intervention by the State. When the constitutionality of an act of the legislature of this state affecting the public interest is drawn in question upon such certification to which the State of Maine or an officer, agency, or employee thereof is not a party, the Supreme Judicial Court shall notify the Attorney General, and shall permit the State of Maine to intervene for presentation of briefs and oral argument on the question of constitutionality.

Entire rule added eff. Sept. 14, 1965.